HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.23494 of 2007

Date:06.12.2007

Between:
M/s. Prakash Arts, represented by its
Chief Operating Officer-H.V.Surendranath,
Himayathnagar, Hyderabad.

...
Petitioner

AND
State of Andhra Pradesh, represented
by its Secretary, Municipal Administration &
Urban Development (F2) Department and
three others.

... Respondents

Counsel for the petitioner: Sri S.R. Ashok, learned Senior Counsel
for V.V.Anil Kumar &
M.Srinivasa Rao.

Counsel for the respondents: Asst. Govt. Pleader for Municipal
Administration for R.1.
Smt. Kalpana Ekbote for R.2 and R.3.
Sri T.S. Praveen kumar for R.4.

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HONOURABLE MR.JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.23494 2007

ORDER:-

This Writ Petition is filed for a Writ of Mandamus to declare that respondent No.2-Greater Hyderabad Municipal Corporation has no jurisdiction to grant permission to respondent No.4 for erecting unipole hoardings in Darga lands as long as the order of the Government, vide: Memo No.2254/2007-2 dated 24-3-2007 of Municipal Administration and Urban Development (F2) Department, holds the field; and further declare the Governmental action insofar as it purported to vacate order dated 24-3-2007, without notice to the petitioner, is a nullity.

Since this writ petition is being disposed of on the short ground, viz., violation of principles of natural justice, facts need not be mentioned in detail. Suffice it to state that the petitioner filed a revision petition before respondent No.1 against order dated 15-3-2007 of respondent No.2, wherein respondent No.4 was permitted to erect advertisement boards in the lands belonging to Dargas. On 24-3-2007 respondent No.1 stayed the said proceedings of respondent No.2. Subsequently, respondent No.3 served letter dated 23-10-2007 on an employee of the petitioner on 27-10-2007, wherein it was informed that order dated 15-3-2007 passed by respondent No.2 granting stay in favour of the petitioner was vacated on 22-10-2007 by the

Honourable Minister for Municipal Administration and Urban Development, Government of A.P. The petitioner, therefore, filed the present Writ Petition for the reliefs mentioned hereinabove.

In paragraph 6 of the affidavit filed in support of the Writ Petition it is specifically averred that to the knowledge of the petitioner no such order was passed by the Honourable Minister as claimed to have been passed on 22-10-2007 and that even if any such order was passed, the same is non-est as it was passed without notice to the petitioner, who is the revision petitioner before respondent No.1.

Dr.C.V.S.K.Sarma, Commissioner and Special Officer, Greater Hyderabad Municipal Corporation, Hyderabad and Ex-Officio Principal Secretary to Government, Municipal Administration & Urban Development Department, Government of Andhra Pradesh, A.P.Secretariat, Hyderabad, filed a counter-affidavit, in which it is, inter alia, mentioned that respondent No.4 submitted representation dated 16-8-2007 to the Honourable Minister, in which it was stated that they were incurring monetary loss because of stay, and that on the said representation a personal hearing was conducted by the Honourable Minister on 4-10-2007 with both the petitioner and 4th respondent. It is further stated that as a request for granting time was made on behalf of the petitioner, hearing was adjourned to 15-10-2007, on which date the Honourable Minister heard the parties and that on the clarification issued by the A.P. State Wakf Board, the Honourable Minister vacated the stay on 22-10-2007.

On being directed, the learned Assistant Government

Pleader for Municipal Administration produced the record. The record contains the Brief Note submitted by the Additional Commissioner (Advt), Greater Hyderabad Municipal Corporation, to the Honourable Minister for Municipal Administration and Urban Development Department. The relevant portion of the said note reads as under:

> "In this regard, a personnel hearing was held in the chambers of the Hon'ble Minister on 04-10-2007 with both the agencies. M/s. Prakash Arts has requested the Hon'ble Minister for grant of one week time. Subsequently, the second hearing was held on 15-1-2007.
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> In view of the clarification issued by the A.P. Wakf Board and the permission granted by the GHMC afresh, the Hon'ble Minister for M.A. & U.D., may kindly revoke the stay granted".

On the said Note, the Honourable Minister endorsed "Yes. Stay is vacated".

Sri S.R.Ashok, learned Senior Counsel appearing for the petitioner, submitted that the petitioner has neither received any notice of hearing nor any one on its behalf had attended the hearings allegedly held on 4-10-2007 and 15-10-2007. He also submitted that the purported order passed by the Honourable Minister vacating the order of stay has not been communicated to the petitioner.

Having regard to the above mentioned submissions of the learned counsel, I have asked the learned Assistant Government Pleader whether the file contains the Minutes of hearing and any evidence to show that either notices of hearing were served on the parties or the parties were present on the above two dates before the Honourable Minister. The learned Assistant Government Pleader candidly stated that there is no such evidence available on record.

It is not in dispute that the remedy availed by the petitioner is traceable to Section 679 of the Hyderabad

Municipal Corporation Act, 1955 and the Honourable Minister is expected to hold a legal hearing while disposing of the stay application or the revision petition. As a part of this process, respondent No.1 is expected to maintain the record of hearing and it is surprising that no such record is available to substantiate the stand taken by them that either notices of hearing were given to the parties or that parties were actually present and heard on the aforementioned two dates. Without such evidence being available on record, I am not prepared to accept the veracity of the contents of the Note file regarding the opportunity of personal hearing given to the petitioner.

Since I am convinced that the order passed by the Honourable Minister is in violation of the principles of natural justice, I declare endorsement dated 22-10-2007 made by him invalid and a nullity.

For the aforementioned reasons, the Writ Petition is allowed. Order dated 24-3-2007 passed by the Honourable Minister stands restored. Respondent No.1 shall hear the main revision petition itself after giving notice and opportunity of hearing to the petitioner and respondent No.4 and dispose of the same within a period of three weeks from the date of receipt of a copy of this order.

C.V.NAGARJUNA REDDY,J
06-12-2007

Note:
Issue CC in four days.
(BO)

MNR